

AMENDED IN SENATE SEPTEMBER 11, 2013

AMENDED IN SENATE SEPTEMBER 6, 2013

AMENDED IN ASSEMBLY APRIL 1, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 744

Introduced by Assembly Members Dahle and Gordon
(Coauthors: Senators Gaines and Nielsen)

February 21, 2013

An act to amend Section 4584 of the Public Resources Code, relating to forest resources.

LEGISLATIVE COUNSEL'S DIGEST

AB 744, as amended, Dahle. Timber harvesting plans: exempt activities.

The Z'berg-Nejedly Forest Practice Act of 1973 prohibits a person from conducting timber operations unless a timber harvesting plan prepared by a registered professional forester has been submitted to the Department of Forestry and Fire Protection. The act authorizes the State Board of Forestry and Fire Protection to exempt from those provisions of the act a person engaging in specified forest management activities, including, the harvesting of trees, limited to those trees that eliminate the vertical continuity of vegetative fuels and the horizontal continuity of tree crowns, for the purpose of reducing the rate of fire spread, duration and intensity, fuel ignitability, or ignition of tree ~~crowns~~. *crowns if the tree harvesting will decrease fuel continuity and increase the quadratic mean diameter of the stand, and the tree harvesting area will not exceed 300 acres.* Under existing law, the notice of exemption issued for this exemption, known as the Forest Fire Prevention

Exemption, may be authorized only if certain conditions are met, including that only trees less than 18 inches in stump diameter, measured at 8 inches above ground level, may be removed, as provided.

This bill would, until January 1, 2019, provide that an additional notice of exemption, known as the Forest Fire Prevention Pilot Project Exemption, may be authorized if certain conditions are met, including, among others, that only trees less than 24 inches in stump diameter, measured at 8 inches above ground level, may be removed, as provided.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) It is the intent of the Legislature to establish
2 a five-year pilot project to assess whether increasing the diameter
3 of trees that may be removed pursuant to the existing Forest Fire
4 Prevention Exemption in the Z'berg-Nejedly Forest Practice Act
5 can reduce the risk of catastrophic fire that threatens many
6 communities in the Sierra Nevada while improving the economic
7 use of this exemption for landowners. It is further the intent of the
8 Legislature that the Department of Forestry and Fire Protection
9 maintain adequate records to evaluate this pilot project. It is also
10 the intent of the Legislature that those using this exemption
11 consider the appropriate use of the California Conservation Corps,
12 local conservation corps, and properly supervised inmate fire crews
13 in implementing activities pursuant to this pilot project.

14 (b) It is the intent of the Legislature that the Natural Resources
15 Agency develop a forest restoration and fuels reduction program
16 that utilizes an interagency process to develop regionally
17 appropriate and cost-effective forest restoration prescriptions and
18 permits.

19 SEC. 2. Section 4584 of the Public Resources Code is amended
20 to read:

21 4584. Upon determining that the exemption is consistent with
22 the purposes of this chapter, the board may exempt from this
23 chapter, or portions of this chapter, a person engaged in forest
24 management whose activities are limited to any of the following:

25 (a) The cutting or removal of trees for the purpose of
26 constructing or maintaining a right-of-way for utility lines.

1 (b) The planting, growing, nurturing, shaping, shearing, removal,
2 or harvest of immature trees for Christmas trees or other ornamental
3 purposes or minor forest products, including fuelwood.

4 (c) The cutting or removal of dead, dying, or diseased trees of
5 any size.

6 (d) Site preparation.

7 (e) Maintenance of drainage facilities and soil stabilization
8 treatments.

9 (f) Timber operations on land managed by the Department of
10 Parks and Recreation.

11 (g) (1) The one-time conversion of less than three acres to a
12 nontimber use. A person, whether acting as an individual or as a
13 member of a partnership, or as an officer or employee of a
14 corporation or other legal entity, shall not obtain more than one
15 exemption pursuant to this subdivision in a five-year period. If a
16 partnership has as a member, or if a corporation or other legal
17 entity has as an officer or employee, a person who has received
18 this exemption within the past five years, whether as an individual
19 or as a member of a partnership, or as an officer or employee of a
20 corporation or other legal entity, then that partnership, corporation,
21 or other legal entity is not eligible for this exemption. "Person,"
22 for purposes of this subdivision, means an individual, partnership,
23 corporation, or other legal entity.

24 (2) (A) Notwithstanding Section 4554.5, the board shall adopt
25 regulations that do all of the following:

26 (i) Identify the required documentation of a bona fide intent to
27 complete the conversion that an applicant will need to submit in
28 order to be eligible for the exemption in paragraph (1).

29 (ii) Authorize the department to inspect the sites approved in
30 conversion applications that have been approved on or after January
31 1, 2002, in order to determine that the conversion was completed
32 within the two-year period described in subparagraph (B) of
33 paragraph (2) of subdivision (a) of Section 1104.1 of Title 14 of
34 the California Code of Regulations.

35 (iii) Require the exemption pursuant to this subdivision to expire
36 if there is a change in timberland ownership. The person who
37 originally submitted an application for an exemption pursuant to
38 this subdivision shall notify the department of a change in
39 timberland ownership on or before five calendar days after a change
40 in ownership.

1 (iv) The board may adopt regulations allowing a waiver of the
2 five-year limitation described in paragraph (1) upon finding that
3 the imposition of the five-year limitation would impose an undue
4 hardship on the applicant for the exemption. The board may adopt
5 a process for an appeal of a denial of a waiver.

6 (B) The application form for the exemption pursuant to
7 paragraph (1) shall prominently advise the public that a violation
8 of the conversion exemption, including a conversion applied for
9 in the name of someone other than the person or entity
10 implementing the conversion in bona fide good faith, is a violation
11 of this chapter and penalties may accrue up to ten thousand dollars
12 (\$10,000) for each violation pursuant to Article 8 (commencing
13 with Section 4601).

14 (h) Easements granted by a right-of-way construction agreement
15 administered by the federal government if timber sales and
16 operations within or affecting these areas are reviewed and
17 conducted pursuant to the National Environmental Policy Act of
18 1969 (42 U.S.C. Sec. 4321 et seq.).

19 (i) (1) The cutting or removal of trees in compliance with
20 Sections 4290 and 4291 that eliminates the vertical continuity of
21 vegetative fuels and the horizontal continuity of tree crowns for
22 the purpose of reducing flammable materials and maintaining a
23 fuel break for a distance of not more than 150 feet on each side
24 from an approved and legally permitted structure that complies
25 with the California Building Standards Code, when that cutting or
26 removal is conducted in compliance with this subdivision. For
27 purposes of this subdivision, an “approved and legally permitted
28 structure” includes only structures that are designed for human
29 occupancy and garages, barns, stables, and structures used to
30 enclose fuel tanks.

31 (2) (A) The cutting or removal of trees pursuant to this
32 subdivision is limited to cutting or removal that will result in a
33 reduction in the rate of fire spread, fire duration and intensity, fuel
34 ignitability, or ignition of the tree crowns and shall be in
35 accordance with any regulations adopted by the board pursuant to
36 this section.

37 (B) Trees shall not be cut or removed pursuant to this
38 subdivision by the clearcutting regeneration method, by the seed
39 tree removal step of the seed tree regeneration method, or by the
40 shelterwood removal step of the shelterwood regeneration method.

1 (3) (A) Surface fuels, including logging slash and debris, low
2 brush, and deadwood, that could promote the spread of wildfire
3 shall be chipped, burned, or otherwise removed from all areas of
4 timber operations within 45 days from the date of commencement
5 of timber operations pursuant to this subdivision.

6 (B) (i) All surface fuels that are not chipped, burned, or
7 otherwise removed from all areas of timber operations within 45
8 days from the date of commencement of timber operations may
9 be determined to be a nuisance and subject to abatement by the
10 department or the city or county having jurisdiction.

11 (ii) The costs incurred by the department, city, or county, as the
12 case may be, to abate the nuisance upon a parcel of land subject
13 to the timber operations, including, but not limited to, investigation,
14 boundary determination, measurement, and other related costs,
15 may be recovered by special assessment and lien against the parcel
16 of land by the department, city, or county. The assessment may
17 be collected at the same time and in the same manner as ordinary
18 ad valorem taxes, and shall be subject to the same penalties and
19 the same procedure and sale in case of delinquency as is provided
20 for ad valorem taxes.

21 (4) All timber operations conducted pursuant to this subdivision
22 shall conform to applicable city or county general plans, city or
23 county implementing ordinances, and city or county zoning
24 ordinances. This paragraph does not authorize the cutting, removal,
25 or sale of timber or other solid wood forest products within an area
26 where timber harvesting is prohibited or otherwise restricted
27 pursuant to the rules or regulations adopted by the board.

28 (5) (A) The board shall adopt regulations, initially as emergency
29 regulations in accordance with subparagraph (B), that the board
30 considers necessary to implement and to obtain compliance with
31 this subdivision.

32 (B) The emergency regulations adopted pursuant to
33 subparagraph (A) shall be adopted in accordance with the
34 Administrative Procedure Act (Chapter 3.5 (commencing with
35 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
36 Code). The adoption of emergency regulations shall be deemed to
37 be an emergency and necessary for the immediate preservation of
38 the public peace, health, and safety, or general welfare.

39 (j) (1) The harvesting of trees, limited to those trees that
40 eliminate the vertical continuity of vegetative fuels and the

1 horizontal continuity of tree crowns, for the purpose of reducing
2 the rate of fire spread, duration and intensity, fuel ignitability, or
3 ignition of tree crowns.

4 (2) The board may authorize an exemption pursuant to paragraph
5 (1) only if the tree harvesting will decrease fuel continuity and
6 increase the quadratic mean diameter of the stand, and the tree
7 harvesting area will not exceed 300 acres.

8 (3) Except as provided in paragraph (11), the notice of
9 exemption, which shall be known as the Forest Fire Prevention
10 Exemption, may be authorized only if all of the conditions specified
11 in paragraphs (4) to (10), inclusive, are met.

12 (4) A registered professional forester shall prepare the notice
13 of exemption and submit it to the director, and include a map of
14 the area of timber operations that complies with the requirements
15 of paragraphs (1), (3), (4), and (7) to (12), inclusive, of subdivision
16 (x) of Section 1034 of Title 14 of the California Code of
17 Regulations.

18 (5) (A) The registered professional forester who submits the
19 notice of exemption shall include a description of the preharvest
20 stand structure and a statement of the postharvest stand stocking
21 levels.

22 (B) The level of residual stocking shall be consistent with
23 maximum sustained production of high-quality timber products.
24 The residual stand shall consist primarily of healthy and vigorous
25 dominant and codominant trees from the preharvest stand. Stocking
26 shall not be reduced below the standards required by any of the
27 following provisions that apply to the exemption at issue:

28 (i) Clauses 1 to 4, inclusive, of subparagraph (A) of paragraph
29 (1) of subdivision (a) of Section 913.3 of Title 14 of the California
30 Code of Regulations.

31 (ii) Clauses 1 to 4, inclusive, of subparagraph (A) of paragraph
32 (1) of subdivision (a) of Section 933.3 of Title 14 of the California
33 Code of Regulations.

34 (iii) Clauses 1 to 4, inclusive, of subparagraph (A) of paragraph
35 (1) of subdivision (a) of Section 953.3 of Title 14 of the California
36 Code of Regulations.

37 (C) If the preharvest dominant and codominant crown canopy
38 is occupied by trees less than 14 inches in diameter at breast height,
39 a minimum of 100 trees over four inches in diameter at breast
40 height shall be retained per acre for Site I, II, and III lands, and a

1 minimum of 75 trees over four inches in diameter at breast height
2 shall be retained per acre for Site IV and V lands.

3 (6) (A) The registered professional forester who submits the
4 notice shall include selection criteria for the trees to be harvested
5 or the trees to be retained. In the development of fuel reduction
6 prescriptions, the registered professional forester should consider
7 retaining habitat elements, where feasible, including, but not
8 limited to, ground level cover necessary for the long-term
9 management of local wildlife populations.

10 (B) All trees that are harvested or all trees that are retained shall
11 be marked or sample marked by or under the supervision of a
12 registered professional forester before felling operations begin.
13 The board shall adopt regulations for sample marking for this
14 section in Title 14 of the California Code of Regulations. Sample
15 marking shall be limited to homogenous forest stand conditions
16 typical of plantations.

17 (7) (A) The registered professional forester submitting the
18 notice, upon submission of the notice, shall provide a confidential
19 archaeology letter that includes all the information required by
20 any of the following provisions that apply to the exemption at
21 issue:

22 (i) Paragraphs (2) and (7) to (11), inclusive, of subdivision (c)
23 of Section 929.1 of Title 14 of the California Code of Regulations,
24 and include site records if required pursuant to subdivision (g) of
25 that section or pursuant to Section 929.5 of Title 14 of the
26 California Code of Regulations.

27 (ii) Paragraphs (2) and (7) to (11), inclusive, of subdivision (c)
28 of Section 949.1 of Title 14 of the California Code of Regulations,
29 and include site records if required pursuant to subdivision (g) of
30 that section or pursuant to Section 949.5 of Title 14 of the
31 California Code of Regulations.

32 (iii) Paragraphs (2) and (7) to (11), inclusive, of subdivision (c)
33 of Section 969.1 of Title 14 of the California Code of Regulations,
34 and include site records if required pursuant to subdivision (g) of
35 that section or pursuant to Section 969.5 of Title 14 of the
36 California Code of Regulations.

37 (B) The director shall submit a complete copy of the confidential
38 archaeological letter and two copies of all required archaeological
39 or historical site records to the appropriate Information Center of
40 the California Historical Resource Information System within 30

1 days from the date of notice submittal to the director. Before
2 submitting the notice to the director, the registered professional
3 forester shall send a copy of the notice to Native Americans, as
4 defined in Section 895.1 of Title 14 of the California Code of
5 Regulations.

6 (8) Only trees less than 18 inches in stump diameter, measured
7 at eight inches above ground level, may be removed. However,
8 within 500 feet of a legally permitted structure, or in an area
9 prioritized as a shaded fuel break in a community wildfire
10 protection plan approved by a public fire agency, if the goal of
11 fuel reduction cannot be achieved by removing trees less than 18
12 inches in stump diameter, trees less than 24 inches in stump
13 diameter may be removed if that removal complies with this section
14 and is necessary to achieve the goal of fuel reduction. A fuel
15 reduction effort shall not violate the canopy closure regulations
16 adopted by the board on June 10, 2004, and as those regulations
17 may be amended.

18 (9) (A) This subparagraph applies to areas within 500 feet of
19 a legally permitted structure and in areas prioritized as a shaded
20 fuel break in a community wildfire protection plan approved by a
21 public fire agency. The board shall adopt regulations for the
22 treatment of surface and ladder fuels in the harvest area, including
23 logging slash and debris, low brush, small trees, and deadwood,
24 that could promote the spread of wildfire. The regulations adopted
25 by the board shall be consistent with the standards in the board's
26 "General Guidelines for Creating Defensible Space" described in
27 Section ~~1299~~ 1299.03 of Title 14 of the California Code of
28 Regulations. Postharvest standards shall include vertical spacing
29 between fuels, horizontal spacing between fuels, maximum depth
30 of dead ground surface fuels, and treatment of standing dead fuels,
31 as follows:

32 (i) Ladder and surface fuels shall be spaced to achieve a vertical
33 clearance distance of eight feet or three times the height of the
34 postharvest fuels, whichever is the greater distance, measured from
35 the base of the live crown of the postharvest dominant and
36 codominant trees to the top of the surface fuels.

37 (ii) Horizontal spacing shall achieve a minimum separation of
38 two to six times the height of the postharvest fuels, increasing
39 spacing with increasing slope, measured from the outside branch
40 edges of the fuels.

1 (iii) Dead surface fuel depth shall be less than nine inches.

2 (iv) Standing dead or dying trees and brush generally shall be
3 removed. That material, along with live vegetation associated with
4 the dead vegetation, may be retained for wildlife habitat when
5 isolated from other vegetation.

6 (B) This subparagraph applies to all areas not described in
7 subparagraph (A).

8 (i) The postharvest stand shall not contain more than 200 trees
9 over three inches in diameter per acre.

10 (ii) Vertical spacing shall be achieved by treating dead fuels to
11 a minimum clearance distance of eight feet measured from the
12 base of the live crown of the postharvest dominant and codominant
13 trees to the top of the dead surface fuels.

14 (iii) All logging slash created by the timber operations shall be
15 treated to achieve a maximum postharvest depth of nine inches
16 above the ground.

17 (C) The standards required by subparagraphs (A) and (B) shall
18 be achieved on approximately 80 percent of the treated area. The
19 treatment shall include chipping, removing, or other methods
20 necessary to achieve the standards. Ladder and surface fuel
21 treatments, for any portion of the exemption area where timber
22 operations have occurred, shall be done within 120 days from the
23 start of timber operations on that portion of the exemption area or
24 by April 1 of the year following surface fuel creation on that
25 portion of the exemption area if the surface fuels are burned.

26 (10) Timber operations shall comply with the requirements of
27 paragraphs (1) to (10), inclusive, of subdivision (b) of Section
28 1038 of Title 14 of the California Code of Regulations. Timber
29 operations in the Lake Tahoe region shall comply instead with the
30 requirements of paragraphs (1) to (16), inclusive, of subdivision
31 (f) of Section 1038 of Title 14 of the California Code of
32 Regulations.

33 (11) A notice of exemption, which shall be known as the Forest
34 Fire Prevention Pilot Project Exemption, may be authorized if all
35 of the following conditions are met:

36 (A) The conditions specified in paragraphs (2), (4), (6), (7), ~~(9)~~,
37 and (10) are met.

38 (B) Only trees less than 24 inches in stump diameter, measured
39 at eight inches above ground level, may be removed. A fuel
40 reduction effort shall not violate the canopy closure regulations

1 adopted by the board on June 10, 2004, and as those regulations
2 may be amended.

3 (C) (i) The registered professional forester who submits the
4 notice of exemption shall include a description of the preharvest
5 stand structure and a statement of the postharvest stand stocking
6 levels.

7 (ii) The level of residual stocking shall be consistent with
8 maximum sustained production of high-quality timber products.
9 The residual stand shall consist primarily of healthy and vigorous
10 dominant and codominant trees from the preharvest stand. Where
11 present prior to operations, the overstory canopy closure for trees
12 greater than 12 inches in diameter at breast height shall not be
13 reduced below 50 percent. Stocking shall be met with the largest
14 trees available prior to harvest and shall not be reduced below the
15 standards required by any of the following provisions that apply
16 to the exemption at issue:

17 (I) Clauses 1 to 4, inclusive, of subparagraph (A) of paragraph
18 (1) of subdivision (a) of Section 913.3 of Title 14 of the California
19 Code of Regulations.

20 (II) Clauses 1 to 4, inclusive, of subparagraph (A) of paragraph
21 (1) of subdivision (a) of Section 933.3 of Title 14 of the California
22 Code of Regulations.

23 (III) Clauses 1 to 4, inclusive, of subparagraph (A) of paragraph
24 (1) of subdivision (a) of Section 953.3 of Title 14 of the California
25 Code of Regulations.

26 (iii) If the preharvest dominant and codominant crown canopy
27 is occupied by trees less than 14 inches in diameter at breast height,
28 a minimum of 100 trees over four inches in diameter at breast
29 height shall be retained per acre for Site I, II, and III lands, and a
30 minimum of 75 trees over four inches in diameter at breast height
31 shall be retained per acre for Site IV and V lands. The retained
32 trees shall be the largest trees available prior to harvest.

33 (D) The activities conducted pursuant to this paragraph occur
34 in the Sierra Nevada Region as defined in subdivision (f) of Section
35 33302, in Modoc, Siskiyou, or Trinity Counties, or in any
36 combination of these areas.

37 (E) All activities conducted pursuant to this paragraph occur
38 within the most recent version of the ~~Department of Forestry and~~
39 ~~Fire Protection's~~ *department's* Fire Hazard Severity Zone Map in
40 the high, very high, and extreme fire threat zones.

- 1 (F) This paragraph shall become inoperative on January 1, 2019.
- 2 (12) After the timber operations are complete, the department
- 3 shall conduct an onsite inspection to determine compliance with
- 4 this subdivision and whether appropriate enforcement action should
- 5 be initiated.

O